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Federal Communications Commission  
Commission Secretary  
FCC Headquarters  
445 12th Street, SW, Room TW-A325  
Washington, DC 20554

Subject: In the Matter of Acceleration of Broadband Deployment Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting (WC Docket No. 11-59)

Dear Commissioners:

Contra Costa Water District (CCWD) is a water district in California tasked, as other special districts in California, with providing public service including safe clean treated water and untreated water to approximately 500,000 people in central and eastern Contra Costa County in Northern California. CCWD submits this letter in the above-captioned inquiry proceeding. The communications industry has submitted comments to the Commission that criticize not only local regulation, but also prices charged by all types of public entities, including special districts, for the use of all types of public real estate.<sup>1</sup> The industry appears to suggest that the Commission can rewrite all forms of leases and contracts entered into years ago for use of publicly-owned personal and real property. CCWD opposes such action. The Commission long ago recognized that the Communications Act does not permit it to regulate entities like CCWD (or their property).<sup>2</sup> We urge the Commission to respect CCWD's basic property rights and to recognize that wireless service providers should not be allowed to place additional facilities on CCWD's property, including rooftops, water district structures and other facilities at less than fair market value and without our consent.

CCWD is a public non-profit agency (special district) created in 1937. As a special district, CCWD's powers include provision of public water service, water supply development and planning.

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<sup>1</sup> Comments of Level 3 Communications, LLC, WC Docket No. 11-59 (July 18, 2011) (urging the Commission to preempt the pricing terms of the contract that Level 3's predecessor-in-interest entered into with the New York State Thruway Authority); Comments of CenturyLink, WC Docket No. 11-59, at 8 (July 18, 2011) (criticizing policies of Elephant Butte Irrigation District).

<sup>2</sup> *California Water and Tel. Co.*, 64 FCC 2d 753, 758-59 (1977).

Under California law, CCWD has the power to “[h]old, use, enjoy, lease or dispose of real and personal property of every kind.” Cal. Water Code § 71690(b). While EVMWD has easements and the right to occupy certain private property for the transport of water, these property rights are not generally open to the public for transit, or to public use in the same way as a street; many of the easements and rights-of-way are subject to use restrictions. Likewise, CCWD’s property—the tanks, reservoirs, and maintenance yards—is essentially operated as private property.

While CCWD’s primary mission is to provide water service, CCWD also leases and licenses space on certain parts of its property to wireless providers at market-based rates. These are proprietary agreements much like leases for access to privately-owned property. CCWD’s agreements establish how these wireless entities may use CCWD’s property and must consider, among other things, safety and security risks associated with allowing third parties to access critical public water supply infrastructure.

CCWD has no interest in leasing its property in exchange for the recovery of its costs alone. Doing so would not adequately compensate CCWD for the burdens and risks that necessarily coincide with allowing third parties to use this complex set of property and infrastructure. Similarly, if the Commission were to selectively preempt certain terms of CCWD’s existing leases and licenses (including the price terms); CCWD would have little or no incentive to enter into such agreements at all.

In conclusion, the Commission cannot and should not interfere with CCWD’s basic property rights. Any Commission efforts to regulate leasing of CCWD’s infrastructure and real property—or any action that calls into question the enforceability of existing, voluntarily-negotiated agreements—could obstruct our operations, increase public safety risks, and undermine a system that is currently promoting broadband deployment. Regulation, in short, is likely to create significant new risks that will actually discourage leasing property to communications providers.

Sincerely,

*Cary Richardson Munk*  
*for Peter Colby*

Peter W. Colby  
Watershed & Lands Manager

PWC/CRM:ab